Supreme Court, U.S.
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No. 941429

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

ABHIMANYU SWAIN PETITIONER

vs.

DELORES JAN STEVENS RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

PETITION FOR A WRIT OF CERTIORARI

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79pp

QUESTIONS PRESENTED

1. Is the Mississippi Supreme Court's affirmation of trial court judgment ---which failed to consider evidence and genuine issues of material facts surrounding Melissa and were most favorable to Petitioner--- inconsistence with the prerequisites set out to modify child custody?.

2. Did the Mississippi Supreme Court fail to recognize the jurisdiction and constitutional right of Melissa which this Court has consistently supported?

3. Is the Mississippi Supreme Court 's upholding judgment questionable since the court did not consider evidence and genuine issues to determine whether or not the trial court abused its discretion in modifying Melissa's custody?

4. Does the Mississippi Supreme Court's affirmation of trial court decision --- which lacks an opinion and summary judgment --- contradict, conflict, and raise questionable issues with decisions of other state courts and not to mention with this Court?

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ABHIMANYU SWAIN **PETITIONER**

v.

DELORES JAN STEVENS **RESPONDENT**

PETITION FOR A **WRIT OF CERTIORARI**

TO THE SUPREME COURT OF MISSISSIPPI

The Petitioner, Abhimanyu Swain, respectfully prays that a writ of certiorari issue to review the decision of the Mississippi Supreme Court (MSC) which affirmed the Warren County, Mississippi Chancery Court's judgment against him for the custody of Melissa Hope Swain in spite of the fact that he was first awarded the custody of the minor child on July 10, 1987 by the Chancery

Court (trial court, **TC**) and the same court allowed him to retain the custody of Melissa on April 16, 1992. However, on August 20, 1992 the same court made findings of fact not supported by evidence and wrongfully determined a material change in circumstances surrounding Melissa when the only information available to the court was that Petitioner was delayed in delivering the minor child to Respondent for the 1992 **very first summer visitation.** Based on this the court unjustifiably found an adverse effect on Melissa, and erroneously modified the order of April 16, 1992 and took custody of Melissa away from Petitioner and granted the same to Respondent.

OPINIONS BELOW

The opinion of the Mississippi Supreme is not presented in this appeal because the MSC has failed to provide an opinion despite Petitioner having made a request to that

court to provide the same. This fact appears in the appendix. p. 1a. and 2a. of this Petition.

JURISDICTION

The Court of Appeal's judgment was entered on December 9, 1993 and is set forth in the appendix p. 3a and 4a. A timely Petition for Rehearing and Opinion was filed on December 20, 1993. The Court of Appeals' denial of the Petition for Rehearing was issued on December 1, 1994 and is set forth in the appendix p 5a and 6a. This Court's jurisdiction is invoked under Title 28, U.S.C. Sec. 12 54 (1).

STATUTES INVOLVED

28 U. S. C. 1738. State and Territorial Statutes and judicial proceedings; full faith and credit.

STATEMENT OF THE CASE

The Petitioner, Abhimanyu Swain ,of Indian decent , became the naturalized citizen of the United States of America in 1976, and married Respondent, Delores Jan Jackson Swain Stevens, an American , on November 11, 1982. **The minor child Melissa Hope Swain, the subject matter of this appeal, was born on 21 August 1984.**

On July 10, 1987 the **first judge**, Warren County, Mississippi, after hearing the testimonies of eighteen (18) witnesses, granted Petitioner a divorce from Respondent on grounds of habitual cruel and inhuman treatment. The same date, the court awarded Petitioner Melissa's custody who was close to three years old (**7a-11a**). **Melissa lived happily in a home in Mississippi with Petitioner and his oldest daughter Amanda** born on 14 May 1976, and shared the love, companionship, and bond of her father and sister.

On October 30, 1991, Petitioner moved to Maryland with his two daughters to work for the

United States Department of Commerce as a senior Environmental Engineer. Petitioner's two children enrolled in Maryland schools, attended church three times a week and became involved in social, educational, and other activities. Respondent filed a **contempt citation** against Petitioner and sought Melissa's custody because Petitioner moved to Maryland. On April 1, 1992, the TC's newly elected judge (**second judge because the previous Chancellor who awarded Melissa's custody to Petitioner for the first time died of a heart attack in office),** after three (3) days of hearing and listening to the testimony of seventeen (17) witnesses, denied Respondent's request for Melissa's custody change and **allowed Petitioner to retain the custody of Melissa for the second time (12a-18a).** However, the Court adjusted Respondent's visitation with Melissa to include an extended summer visitation and specific Christmas visitation. The first visitation of Melissa with her mother was to occur on June 15, 1992 .

Although the April 16,1992 TC order (12a-18a) required that Melissa's scheduled summer visitation with Respondent should begin on June 15, 1992 , Melissa attended school in Maryland from November 2, 1991 through 18 June, 1992, made several new friends both in Church and in school, raised a puppy dog born on 11 February 1992, and expressed her desire to her mother to stay in Maryland instead of traveling to Mississippi for the summer.

However, on July 23, 1992 Respondent filed a contempt citation against Petitioner and sought Melissa's custody by the help of a new attorney who was the law partner of the second judge for many years and who advised Respondent to hire the new attorney during Respondent's visit with the judge in his chamber. Respondent testified at the trial court hearing that she did talk with the judge prior to her filing the contempt citation against Petitioner and the transcript presented to the MSC reflects this fact .

On July 23, 1992 Petitioner's attorney requested Respondent's attorney to avoid court appearance and resolve the visitation issue in the light that Petitioner made a round-trip plane reservation for Melissa to spend the rest of the summer with her mother. Nonetheless, Respondent's attorney did not comply with Petitioner's attorney's request.

On July 30, 1992 Petitioner traveled to Mississippi with his two daughters to deliver Melissa to her mother. However, on July 31, 1992 the Chancellor (second judge), after a brief hearing and receiving testimony from Petitioner, Amanda (oldest daughter), **Respondent, and her husband,** obviously became angry at Petitioner because he was late in delivering Melissa to her mother, made findings of fact not supported by evidence or testimonies, determined a material change in circumstances and found adverse effects on Melissa and erroneously modified the April 16, 1992 order **which the same court allowed Petitioner to**

retain Melissa's custody three and half (3 1/2) months earlier (April 16 through July 311992).

On August 20, 1992 the trial court allowed Petitioner (**19a-23a**) a lesser number of summer visitation days with Melissa than what the same Court had granted to Respondent in the April 16, 1992 Court order (**21a-22a**). In addition, the Court ordered Melissa's Christmas visitation with her father to begin on 26 December of each year (the day after Christmas) which is contrary to what the same Court awarded to Respondent in the April 16,1992 Court order. The Court further ordered Petitioner to post a five thousand dollar ($5,000) bond (**22a**) prior to exercising visitation with Melissa and pay Respondent's attorney fee of seven hundred and fifty dollars ($750).

On September 21, 1993, Petitioner appealed the trial court's August 20, 1992 (21a-25a) decision to the MSC, and filed a notice of Appeal.

On December 9, 1993 the MSC affirmed the lower court decision and **did not provide an Opinion (3a-4a).**

On December 20,1993 Petitioner made a timely request to the MSC to provide an Opinion for rehearing. The MSC did not respond to Petitioner's request for an Opinion; **however, the MSC considered his request for a rehearing**.

On December 1, 1994 the MSC denied Petitioner's request for a rehearing (**5a-6a**). On December 14, 1994 Petitioner requested MSC (**24a**) to provide a summary judgment. **However, as of today the MSC has failed to provide a summary judgment.**

Because of the two lower courts' judgments against Petitioner and the requirement of posting a five thousand ($5,000) bond prior to exercising visitation with Melissa, which Petitioner could not obtain because all financial institutions refused him to post a bond for him and his

inadequate financial conditions resulting from continuous custody battle over Melissa did not permit him to post a cash bond, Melissa has not been to her home in Maryland since 31 July 1992 until today, a period of about two and half years (21/2), the home she has known, lived , shared the love, affection, and bond with Petitioner and his oldest daughter Amanda since birth.

REASON FOR GRANTING THE WRIT

Certiorari should be granted for the following **four reasons**:

I. **The Mississippi Supreme Court's affirmation of trial court judgment which fail to consider evidence and genuine issues of material facts surrounding Melissa and which are most favorable to Petitioner is inconsistent with the prerequisites set out to modify child custody and raise troubling and questionable issues which this Court must specifically and unequivocally decide.**

Petitioner asserts that in Phillips v. Phillips, 555 So. 2d. 698 (Miss 1969) and Albright v. Albright,

437 So. 2d 1003 (1983) three prerequisites are set out to modify child custody. **These emphases are**:

First, the moving party must **prove** by a preponderance of evidence, after the entry of the judgment sought to be modified, that there has been a material change in circumstances which adversely affects the welfare of the child.

Second, if such an adverse change has been shown, the moving party must show by like evidence the best interest and welfare of the child requires the change of custody.

Third, should a court consider a child custody change then the court must very seriously evaluate the following factors governing the child: health, education, which parent has had the continuity of care prior to the separation; which has the best parenting skills and which has the willingness and capacity to provide primary child care; the employment of the parent and responsibilities of that employment; physical and mental health and age of the parents; emotional ties of parent and child; moral

fitness of parents; the home, school and community record of the child; the preference of the child at the age sufficient to express a preference by law; stability of home environment and employment of each parent, and other factors relevant to the parent-child relationship.

In the present case, there is no proof , no credible evidence (physical, psychological, psychiatric, or medical) exist, and none of the three prerequisites are satisfied to legally and factually justify Melissa's custody change.

Because the **MSC disregarded all evidence Petitioner submitted in the brief for review; herein,** he submits some evidence to demonstrate that no material changes in circumstances surrounding Melissa occurred between April 16, 1992 and 31 July 1992, **a period of three and half (3 1/2) months**, and absolutely nothing adversely affected her and her best interests during this period **as she lived with Petitioner and her sister Amanda in Maryland**.

First, the very same trial court allowed Petitioner to retain custody of Melissa on April 16, 1992 (**12a-18a**) after a three day hearing while Melissa lived and attended school in Maryland for about six (6) months.

Second, the senior Pastors and a Deacon of the church where Melissa attended church three times a week since moving to Maryland attested their support for Petitioner which clearly demonstrate that Melissa lived very happily under the love, care, stable home, and protection of Petitioner and the love and companionship of her sister Amanda.

Pastor Charles R. Riggs, communicated to the TC the wholesome, loving, Christian home and fellowship of Melissa with Petitioner and her Church family in Maryland as follows (**25a-27a**):

"This is to attest to the claims of Manyu Swain (Petitioner's nick name is Manyu)that his daughters are actively and happily involved in Greenridge Baptist Church, They are very regular in attendance in choir and other programs for their age group respectively. Having been in the home, having talked with them at church in informal settings, I find them very well adjusted with no signs of abnormal behavior. Several

families have reached out in distinct ways to Manyu, Melissa, and Amanda in particular. They are in full fellowship with the Church since Amanda formally placed her membership here.While I am not privileged to all details of custody dynamics that occurred previous to the move to Maryland, it would be very difficult to conceive that authorities would disrupt the normalcy of the present stable and healthy adjusted function of this family.The observable bonding of Melissa to her father is significant enough to produce very traumatic reaction if forced separation is inflicted upon the family now. The pervasive security and stability in the know present environment is a constant that would have to be weighted against a possible creation of an alien, strange and strained milieu of unknown nurture and succor. The potential for social chaos for Melissa is very real if this present bonding to Manyu is destroyed or retarded seriously. There are no signs that would support any claims of abuse or neglect observable by me."

Jess Edwards, Deacon of Greenridge Baptist Church and Deacon of Melissa and over sixty five (65) members of the Church expressed their desire to the trial court at the reconsideration hearing and to the Court of Appeal by pointing to the welfare, deep concern, and well being of Melissa **(28a-31a)** when the custody of Melissa was changed from Petitioner to Respondent .

"We shared with Manyu the very deep concern over recent disruption in Melissa's life when her custody was awarded to her mother. For the past five years or so, the Court has, on numerous occasions, seen fit to place Melissa in the primary custody of Manyu. In April, the decision of the Court to allow Manyu to retain permanent custody of Melissa seemed to finally settle the matter. The error Manyu made in delaying Melissa's Court ordered visitation cannot be excused. However, his motivation for the delay was due to his concern for Melissa's completion of the school year and was not meant, in any way, to be in contempt of the Court's order. We can understand that Manyu's action was offensive to the Court. However, we fail to see how this error changes the prior basis on which Manyu had been awarded custody.

Our primary concern is for Melissa's well being. We feel that her removal from a home she happily shared with a loving father and sister could be very traumatic to her. In addition, leaving her friends, her school, and her church places a great burden upon her. We are also concerned with the emotional trauma this separation places upon Amanda who, as an older sister, has been a source of love and support for Melissa. We ask the Court to prayerfully reconsider the decision to place Melissa in her mother's custody and to return her to the father and sister who have loved and provided for her these past years."

Third, Petitioner's supervisor Daniel Farrow faxed a letter (**32a-34a**) on July 30, 1992 the day before the trial court hearing and later mailed it to the trial court judge to include in the reconsideration hearing. In the letter, Mr Farrow expressed these observations for Petitioner's behalf:

"I am Mr. Swain's supervisor at the Pollution Sources Characterization Branch of the National Oceanic and Atmospheric Administration, and am aware of his situation regarding his child custody case. I would like to offer these observations as a character reference for Mr. Swain. I have known Mr. Swain since November 1991 when he came to work for my Branch. During this time, I have observed him to be completely devoted to caring for his two children. He has tried to get his children involved in the local community by encouraging them to join church and school activities, and has put unusual demand on his own work schedule so that he can spend more time with children. He appears to be doing everything in his power to be a good parent and provide a good home environment for his children. .. Finally, I am concerned about the welfare of his children Melissa and Amanda. They are the one's who suffer as a result of Mr. Swain's being pulled about this process, and ultimately are the big losers because of the disruption to their lives and impact on their father 's energy and resources as a result of this draining fight.

Based on the contents of these three examples Petitioner asserts that Melissa was very happy in Maryland with Petitioner and sister, and the circumstances surrounding Melissa were not detrimental to her, and they did not adversely affect her best interests. Therefore the MSC did not meet the first two prerequisites, and consequently the affirmation to trial court judgment is questionable.

The same holds true for the third prerequisite which the MSC failed to consider. This stems from the following facts: Petitioner has been U. S resident since 1971 and a citizen since 1976, holds a Ph.D in engineering and three Masters degree in engineering from three countries (India, Canada and U.S.A), has continuously working for the Federal Government for the past fifteen (15) years, has the best parenting skill because he raised not only Melissa but also Amanda as a single parent, provides the best home and best school for the children, and has allowed his children to get involve in the local community by encouraging them to join church and school activities.

In addition Amanda testified at the TC hearing (the transcript presented to the MSC includes these statements) about the circumstances surrounding Melissa at her home in Maryland. According to Amanda:

Melissa makes straight "A's", Dad helps us both in school works. Melissa had made tons of new friends. We just moved there. I think we should have summer there getting involved with everybody.

When asked to describe where she and Melissa live, Amanda said:

" It's a town house. There is a lot of people. It's very nice. It's close in, woods, wooded area around. There is no harm or anything. There is a playground. There is a bike path that we always run on. Melissa has tons of friends that are always at our house. She has more friends than I do. We go church twice on Sunday and every Wednesday. I sing in church. Melissa plays soccer and softball. My Dad has taken us to Ocean City for the Fourth of July. We also took Melissa for her vacation to Kings Dominion. We are fine. Melissa is happy in Maryland and really didn't want to come to Mississippi.

Petitioner had the continuous care and protection of Melissa for five years prior to custody

change.

In contrast, Respondent dropped out of high school from ninth grade and never went back to school to complete high school. She lives in a trailer with her husband which is isolated from the city and there are no children of Melissa' s age in the neighborhood. Respondent and her husband cannot assist Melissa with her school works. Respondent has not allowed Melissa to participates in any sport activities.

Melissa lives with Respondent and Respondent's husband in the trailer with constant fear of tornadoes and extreme weather conditions. **In brief, Melissa is very unhappy in Mississippi with Respondent.**

The MSC has failed to take into account, adopt and enforce the three prerequisites for Melissa's custody change and consider the profoundest desire of a father to raise his daughter in a stable, loving, harmonious, and safe lifestyle home that Melissa enjoyed with Petitioner and her sister Amanda since birth.

Additionally Petitioner maintains that Respondent did not present any concrete testimony by, lay witness, experts, medical proofs, psychological, or psychriatic tests at the July 31, 1992 TC hearing to support the fact that material changes in circumstances surrounding Melissa occurred between April 16, 1992 and July 31, 1991, during a period of three and half (3 1/2) months, and those circumstances adversely affected her best interests, then. The MSC overlooked these facts.

Therefore, Petitioner asserts that Melissa lived a very happy and enjoyable life with petitioner and sister in Maryland, and her best interests exist in Maryland with petitioner and not with Respondent in Mississippi.

Based on these facts, Petitioner contends that the MSC's decision to affirm TC's decision conflicts with decisions of other state supreme courts, not to mention with decisions by this Court.

In view of this distinct conflict, the Court should grant Petitioner a writ of certiorari to resolve this questionable issue.

II. The Mississippi Supreme Court failed to recognize the jurisdiction and constitutional right of Melissa which this Court has consistently supported.

One element that must be considered is because Melissa lived in Maryland with Petitioner and her sister during 30 October, 1991 and 29 July 1992 , a period of nine (9) months, Petitioner very strongly feels that the TC has violated Maryland's jurisdiction over Melissa pursuant to the Uniform Child Custody Jurisdiction Act (UCCJA) and the MSC overlooked it.

On 22 July, 1992 , nine (9) days before the TC hearing (July 31, 1992), Petitioner wrote a letter to the TC Clerk and informed him about the UCCJA (35a-36a). The letter read :

"In accordance with the Statue of Maryland's Uniform Child Custody and Residence requirement, I am requesting you to send my entire file of the above reference to the Montgomery County, Chancery Court in Maryland. This request is made to you because myself and my daughters are the residence of Montgomery County as of October 29, 1991.

I further request that any petition filed

against me in the Chancery Court by Mrs. Delores Jan Stevens should be denied because your office has no jurisdiction over either on me or on my daughter Melissa Hope swain who lives with me."

The TC's Clerk's office did not respond to Petitioner's request and the MSC disregarded the jurisdiction fact, although the transcript reflects the jurisdiction issue.

To address the question of Melissa's constitutional right, Petitioner submits the following fact:

Melissa wrote a letter to her mother (**37a**) in which she expressed her desire to stay in Maryland instead of traveling to Mississippi for summer 1992: She wrote:

Dear Mom ,

I do not think it's right to take my Dad to court. This is my life that's your life. We both have a life to live now live it. I don't want to come because I want to take care of the puppy.
Love, This is my home.
Melissa

In Bergstrom v. Bergstrom 296 NW2d 490 10 ALR4th 812 (1980) US 10 ALR4th 841, it is stated that " A U. S. citizen, **although still a child, the child can make a choice of residence,** the residence of the child at the time of hearing must play a significant factor in determining the best interest of the child as to where the child should be placed."

Petitioner invited the trial court to talk to Melissa privately in the chambers at the July 31 1992 custody modification hearing. However, the TC declined to talk to Melissa who was available for questioning. Petitioner also asked Respondent's attorney to question Melissa whether or not she wanted to come to Mississippi for summer. The TC as well as the attorney declined to talk to Melissa. **Petitioners brief to the MSC indicated these facts.**

Melissa made her choice to stay in Maryland for summer 1992 because she saw her mother briefly in Mississippi in January 1992, made a lot of new friends in Maryland, and wanted to take care of the new puppy at home.

Additionally, Melissa's choice is her constitutional right which this Court has consistently supported. But the MSC failed to support. **Therefore, the Court should grant this petition.**

III. The Mississippi Supreme Court did not consider evidence and genuine issues to determine whether or not the trial court abused its discretion in modifying Melissa's custody.

The fact that the TC could not find any credible evidences to use against Petitioner, the same court used the contempt issue against him to modify Melissa's custody because he was late in complying with the April 16, 1992 order **(14a)** regarding **Melissa's very first visitation** with Respondent. However, the contempt issue is absolutely separate and distinct from the custody modification issue in that the contempt matter cannot be used as a substitute to demonstrate that a material change in circumstances surrounding Melissa did occur which adversely affected her best interests. **The MSC ignored this fact.**

Petitioner further maintains that when Petitioner , Melissa and Amanda moved to Maryland on October 30, 1991, Respondent brought contempt charge against Petitioner because she could not exercise the biweekly visitation with Melissa as per the July 10, 1987 order (**8a**), and Respondent sought Melissa's custody change. However, on April 16, 1992 when Petitioner's daughters were still living in Maryland and attending school for about six months, the very same TC did not find Petitioner in contempt of the court (**12a-18a**). In this order, TC denied Respondent's request for Melissa's custody change and allowed Petitioner to continue Melissa's custody with Petitioner as **Res Judicate** .

Based on this, **Petitioner argues** that if the TC could not find material change in circumstances surrounding Melissa that adversely affected her best interest during this period, then absolutely no change in circumstances surrounding Melissa could have occurred between April 16, 1992 and July 31, 1992, a period of three and half (3 1/2) months, that adversely

affected her best interest.. **The MSC overlooked this very important piece of evidence.**

Therefore, Petitioner feels that the TC's contempt citation against him has no relevance on Melissa's custody change, and the MSC is clear conflict with other state supreme courts and not to mention with this Court.

Petitioner cannot understand why the MSC overlooked all facts and evidence Petitioner submitted with the brief to determine whether or not the TC abused discretion, especially the following comparison regarding Melissa's visitation:

The comparison reflects abusive discretion of the TC (**second judge, 23a**), actions, and conduct against Petitioner which the MSC overlooked.

These facts can be demonstrated by comparing Melissa's visitation and other issues the same TC awarded to Respondent in the April 16, 1992 order (**16a-18a**) and the visitation and other issues the TC awarded to Petitioner in the August 20,

1992 order (**21a-22a**)). **The comparison is as follows:**

VISITATION

GRANTED TO RESPONDENT (GResp)

GRANTED TO PETITIONER (GPeti)

From June 15 until July 23 of each and every year, **a period of five (5) weeks. (to GResp, 16a)**

From June 20 to July 20 of each year, a period of **four (4) weeks. (to GPeti, 21a)**

From December 23, 1992 until January 2, 1993 and from December 23 until January 2 on every even numbered years thereafter (**to GResp, 16a-17a**)

This visitation schedule will allow Respondent to have Melissa for Christmas at alternate years.

From December 26, 1992 to January 2, 1993 and from December 26 to January 2, 1993 of each and every year there after **(to GPeti, 21a)**

This visitation schedule will never allow Petitioner to have Melissa spend Christmas with him because December 26 is the day after Christmas (21a).

In the April 16, 1992 order when the TC allowed Petitioner to retain Melissa's custody, the court ordered:

Because of the distance involved, Abhimanyu Swain deliver the minor child, Melissa Hope Swain, to Delores Jan Stevens at the beginning of each summer and Christmas Holidays. Delores Jan Stevens be responsible for the return of the minor child to the home of Abhimanyu Swain in Damascus, Maryland (**17a-18a**).

In the August 20, 1992 trial court order when the court took Melissa's custody away from Petitioner, the court ordered:

That Abhimanyu Swain is **Responsible for and to pay for all travel arrangements for said visitation** to include picking up the child in Vicksburg and returning the child to her mother after said visitation (**21a**).

In the April 16, 1992 order the trial court did not award attorney fee to Petitioner despite he won the case. Respondent required posting no bond prior to exercising visitation with Melissa.

However, in the August 20, 1992 trial court order , the court ordered Petitioner to pay one thousand dollars ($1,000) (23a) attorney fee to Respondent's attorney and the court asked Petitioner to post five thousand dollars ($5,000) bond prior to exercising visitation with Melissa (22a).

Petitioner leaves these questionable matters to the discretion of this Court and to ascertain whether or not the TC's decision to change Melissa's custody was a direct effort **to punish him.**

If indeed it was a punishment action, then the TC not only punished Petitioner but also punished Melissa and Amanda. Punishing two innocent precious children

can be viewed beyond the shadow of a doubt as the most gruesome, cruel, and inhuman form of punishment that a trial court could ever inflict upon innocent children. The petitioner is not just the loser but Melissa and Amanda are losers as well.

In Ashwell v. Ashwell, 135 Ca. App. 2d 211, 286 P.2d 983, 987, (1955), the California Court of Appeals stated: "..... where custody of children shall lie the courts are not engaged in disciplinary action to punish parents for their shortcomings as individuals.....". In Houde v. Beckmeyer, 116 N. H. 719, 366 A. 2d 504, 506 (1976), the New Hampshire Supreme Court stated: " The award of custody is not a devise to reward or punish parents,.....". In Whitefield v. Whitefield, 295 So. 2d 501, 502 (C. A. La. 1974), the Louisiana Court of Appeals stated: " The purpose of a custody determination is not to punish a parent for any past misconduct, it is rather to serve the best interest of the children of the marriage." In Crowson V. Moseley, 480 So. 2d

1150 (MS 1985) wherein it is clearly recited that there should never be a modification of custody just to punish an offending party."

Therefore, Petitioner maintains **that questionable issues exist relative to the MSC affirmation of TC decision and it is this Court's discretion to resolve them by granting this petition.** .

IV. The MSC did not provide an opinion and summary judgment despite Petitioner having made a request for these documents. The MSC's affirmation decision contradicts, conflicts, and raises questionable issues with decisions of other state courts and not to mention with this Court.

Petitioner believes that the MSC did not carefully read, consider , and review his brief. This stems from the fact that on November 30, 1993 Petitioner requested the MSC to expedite his case **(38a) because he has not been allowed to visit with Melissa since July 31, 1992, a period of over a year, due to the**

bond requirement. However, **nine (9) days later when a certified letter from Maryland to Mississippi takes about four (4) days to reach the destination,** on December 9, 1993 the MSC affirmed the trial court judgment and failed to provide an opinion

On December 20, 1993 Petitioner requested the MSC to provide him with an Opinion (**1a**) and requested for additional appeal rights, including a rehearing. The MSC did not respondent to Petitioner's request for an opinion.

On November 24, 1994 Petitioner mailed a certified letter with return receipt and asked the MSC to expedite the rehearing. **Six days later**, on December 1, 1994 the MSC denied Petitioner's request for a rehearing.

On December 14, 1994 Petitioner mailed a certified letter (**39a**) and requested the MSC to provide him with a summery judgment. **As of today, the MSC did not answer to Petitioner's request for a summary judgment.**

If this Court cannot judge a state court's actions and conduct against a Petitioner, who is determined to raise Melissa, and cannot evaluate the love, concern, care, and protection of a father for his daughter, then there is no stimulating desire for a citizen of the United States of America to have confidence in the judiciary system of a state court and to seek justice in this great country.

Therefore Petitioner **seeks justice from this Court if not for his sake at least for the sake of Melissa and Amanda** who are as of this day devastated by the separation and the actions and conducts of the trial court and the MSC against them and they cannot understand why two sisters are separated thousands of miles apart.

In fact , Amanda sees daily the empty room just opposite to her room where Melissa lived, played, shared her companionship and bond, laughed, and enjoyed her life with Amanda.
It tears Amanda apart as she sees Melissa's

belongings each day which are still there the way Melissa left them approximately two and half (2 1/2) years ago.

In view of the evidence presented with this petition and the clear conflicts of issues which the MSC failed to resolve, this Court should grant this petition.

CONCLUSION

For the reasons set forth in the "REASONS FOR GRANTING THE WRIT", the petition for a writ of certiorari should be granted.

Respectfully submitted,

Abhimanyu Swain

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DATED: February 24, 1995.

Ms. Linda Stone

Supreme Court Clerk

P.O.Box 249

Jackson, MS 39205-9249

20 December, 1993

SUBJECT: REQUEST "OPINION" TO SUPREME COURT DECISION FOR APPEAL NO: 92 - CA - 972

Dear Ms. Stone:

I earnestly request you and the panel of judges to provide me and my attorney with an **opinion** to the judgment of Appeal Case 92 - CA - 972 rendered on 9 December, 1993 as soon as possible. Also please specify my appeal rights to the same case with regard to the Supreme Court decision on Case 92 - CA - 972. I intend to appeal. **Therefore, kindly provide important information, necessary materials, and all options that are available to me for making an appeal.**

Myself and my attorney were surprised, shocked, and perplexed by the decision rendered by judge Hankins, Sullivan, and Smith against my appeal case

92 - CA - 972. I do appreciate your and judges assistance to expedite my case. Myself and my oldest daughter Amanda still do not understand why custody of my little girl Melissa was snatched away from us at the first place. I was so certain of winning the case that I had planned many things for my daughter Melissa for Christmas. Lord only knows when I may be allowed to visit with my daughter.

I look forward to hearing from you. May God bless you and the judges in this holiday season.

Yours very truly,

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SUPREME COURT OF MISSISSIPPI

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P.O.Box 249

Jackson, Mississippi 39205-0248

DEPUTY CLERKS

KATHY GILLES

BETTYE MALANCHAK

December 9, 1993

TELEPHONE

601 359 3694

FAX

601 359 2407

Travis T. Vance, Jr.
Attorney at Law
1117 Openwood St.
Vicksburg MS 39180

Abhimanyu Swain
10522 Tralee Terrace
Damascus MD 20872

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 9th Day of December, 1993.

Supreme Court Case #92-CA-0972

Trial Court Case #32415

Abhimanyu Swain

vs.

Delores Jan Swain Stevens

Motion to Expedite Appeal Granted. Order entered -

Before Hawkins, C. J, Sullivan and Smith JJ, :

Judgment is Affirmed. Appellant is taxed with all costs of this appeal.

Supreme Court Clerk

lwp

ccs: J. Mack Varner

Warren County Chancery Clerk

SUPREME COURT OF MISSISSIPPI

Linda Stone, Clerk

Third Floor Gartin Building

450 High Street

P.O.Box 249

Jackson, Mississippi 39205-0248

DEPUTY CLERKS

KATHY GILLES

BETTYE MALANCHAK

TELEPHONE 601 359 3694

FAX 601 359 2407

December 1, 1994

Travis T. Vance, Jr.

Attorney at Law

1117 Openwood St.

Vicksburg MS 39180

Abhimanyu Swain

10522 Tralee Terrace

Damascus MD 20872

Pro Se

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 1st Day of December, 1994.

Supreme Court Case #92-CA-0972

Trial Court Case #32415

Abhimanyu Swain

vs.

Delores Jan Swain Stevens

Petition for Rehearing denied. The mandate of this Court issued January 4, 1994 is recalled pending this Court's action on the petition for rehearing. Ordered entered.

Supreme Court Clerk

lwp

ccs: J. Mack Varner

Warren County Chancery Clerk

Judge Gerald E. Braddock

Court Administrator

IN THE CHANCERY COURT OF WARREN COUNTY, MISSISSIPPI

DELORES JAN HOLMES JACKSON SWAIN

Plaintiff

VS

NO. 32, 415

ABHIMANYU SWAIN

Defendant

JUDGMENT OF DIVORCE

This matter having come on to be heard before this Court on the 25th day of June, 1987, having been set for a trial on this data and the Court did proceed to hear testimony from the witness stand from the parties and their witnesses and the Court, after hearing the testimony and having considered all of the pleadings and being otherwise duly advised and informed in this matter is of the opinion that the proof offered in support of the Plaintiff's case was inadequate and the Plaintiff's cause of action should

be dismissed. The Court, being further of the opinion that the said defendant having made a case of habitual cruel and inhuman treatment against the said Plaintiff, is of the opinion the defendant should be granted a divorce from the said Plaintiff and other relief as prayed for.

IT IS , THEREFORE. ORDERED, ADJUDGED AND DECREED that:

1. The Defendant, Manyu swain, is hereby granted a divorce absolute from the said Plaintiff, Delores Jan Holmes Jackson Swain, on grounds of habitual cruel and inhuman treatment. The complaint filed by Plaintiff is hereby dismissed.

2. The parties are granted joint legal custody of the minor child, Melissa Hope Swain, a girl born on 21 August 1984 in Vicksburg, warren County, Mississippi. Manyu swain is granted the primary physical custody.

3. Plaintiff shall have the right to have the minor child visit with her every other weekend, beginning at 5:00 p.m. on Friday afternoon by picking up and returning

said child to Defendant by 5:00 p.m. on Sunday afternoon with the first visitation beginning Friday, July 10, 1987, and every other weekend.

4. Plaintiff shall also have reasonable rights of visitation with the minor child of the parties at all reasonable time and place as will not interfere with the proper upbringing of the minor child, including, but not limited to the right to have the minor child visit with her each year for one week in June, July, and August. Said visitation being on the second week of each of the summer months by calling for and returning said child to the home of Defendant. Said visitation shall be continued until such time as the minor child begins school, and then said visitation shall consist of two weeks in July beginning at the second week. At the time Plaintiff picks up said minor child for visitation, an adult driver shall be in said vehicle and under no circumstances shall Leroy Donald Jackson, Jr. call for the minor child alone. Each party by this Court Order is hereby ordered to furnish the complete home address and work and

home telephone numbers to each other for emergency use.

5. Said Plaintiff shall have the clothing left in the home of the parties at the 107 Hilda Drive, Vicksburg, Mississippi, that belongs to her; the stereo, television, her other children's furniture, Donna Kay's bed, desk, chair, lamp, and other miscellaneous items that belonged to Plaintiff before her marriage. Plaintiff shall return to defendant his U.S. Government I. D. card, his PTL Tower membership card, and such toys and clothing of Melissa Hope Swain. Defendant shall furnish clothing and toys for Melissa at each visitation date. Defendant is given possession of the 1982 Firebird automobile, VIN 2AS8714CL567055.

6. Defendant shall pay to Plaintiff the sum of $750.00 as a reasonable attorney fee for the service of W. B. Duggins in successfully defending the claim charged by Defendant on adultery. Defendant shall pay said sum due as follows: $250.00 within 30 days from the date of this decree, and $250.00 within 60 days, and $250.00 before 90 days.

7. Plaintiff is granted the name of Delores Jan Holmes to be known and called from this date.

8. Costs of this action are assessed to Plaintiff.

SO ORDERED , ADJUDGED AND DECREED on this 10th day of July 1987.

NAT BULLARD

CHANCELLOR

W. B. DUGGINS

ATTORNEY FOR PLAINTIFF

OSCAR P. LABARRE

ATTORNEY FOR DEFENDANT

IN THE CHANCERY COURT OF WARREN COUNTY, MISSISSIPPI

DELORES JAN SWAIN STEVENS

Plaintiff

VS

ABHIMANYU SWAIN

Defendant

NO. 32, 415

ORDER

THIS CAUSE came on for hearing on the 1st day of April, 1992 on the Petition to modify Final Decree and Amended Petition to Modify Final Decree as filed by Delores Jan Swain Stevens against Abhimanyu Swain, Defendant and Defendant having been served with process of this Court in the way and in the manner prescribed by law, and on the Answer to Petition to Modify Final Decree and Cross-Petition For Citation For Contempt and Cross-Petition to Former Decree and Amended Answer to Petition to Modify Final Decree and and Cross-Petition For

Citation For Contempt and Cross-Petition to Modify Former Decree as filed by Abhimanyu Swain against Delores Jan Swain Stevens and such matter having been set for trial by agreement of all parties and their respective counsel, and the Court being satisfied of the jurisdiction of the parties and the subject matter hereof and the parties having appeared in open Court with their respective counsel and witnesses and the Court having heard oral testimony in open Court from the parties and their respective witnesses and being otherwise fully advised in the premises is of the opinion and so finds, that:

1. **On the Amended Petition to Modify Former Decree as filed by Plaintiff, Delores Jan Swain Stevens there has been no substantial and material change in circumstances surrounding the parties and the minor child since the original decree of divorce that would warrant a modification of the previous decree of this Court relative to a change of child custody from the Defendant, Abhimanyu**

Swain to Delores Jan Swain Stevens; that the Amended Petition to Modify Decree be, and the same is hereby dismissed.

2. The decree of divorce entered in this cause regarding visitation privileges of the Plaintiff, Delores Jan Swain Stevens with the minor child of the parties and therefore the visitation in such decree should be modified and Plaintiff should have visitation with the minor child, Melissa swain during each summer vacation period from June 15 until July 23 beginning with the summer of 1992 and continuing on such dates until further ordered of this court; that further the Christmas Holiday visitation of Plaintiff, Delores Jan Swain Stevens should be altered between the Plaintiff and Defendant with Plaintiff having visitation with the minor child from December 23, 1992 until January 2, 1993 and from December 23 until January 2 on every even numbered year thereafter; that Plaintiff should have visitation with the minor child of the parties from December 26 to January 2 on every odd numbered year beginning with the Christmas

Holidays for the year 1993 and such December 26 to January 2 Christmas Holiday visitation of Plaintiff with the minor child should continue on every odd numbered year thereafter until further Order of the Court; further the Court finds

3. That in the exercise of such visitation because of the distance between the parties the Defendant, Abhimanyu Swain should deliver the minor child, Melissa Swain to Plaintiff, Delores Jan Swain Stevens at the beginning of such summer and Christmas Holiday visitation period and Plaintiff, Delores Jan Swain Stevens should be responsible for the return of the minor child to the home of Defendant, Abhimanyu swain in Damascus, Maryland, at the end of each of such periods of visitation; further

4. The Court finds that the cross-Motion For Contempt and Cross-Motion to Modify Former Decree as filed by defendant be and the same should be dismissed; it is therefore,

ORDERED , ADJUDGED AND DECREED that;

1. There has been no material and substantial change in the circumstances surrounding the parties and the minor child since the rendition of the original decree of divorce that would warrant a custody change and therefore the Amended Petition to Modify Decree be, and the same is hereby dismissed.

2. The visitation privileges of the Plaintiff, Delores Jan Swain Stevens **be, and they are hereby modified and Plaintiff is hereby awarded modified visitation with the minor child, Melissa Swain as follows:**

During each summer vacation period from June 15 until July 23 beginning with the summer of 1992;

The Christmas Holiday visitation of Plaintiff, Delores Jan Swain Stevens be altered between the Plaintiff and Defendant; that Plaintiff is hereby awarded visitation privileges with the minor child, Melissa Swain from December 23, 1992 until January

2, 1993 and from December 23 until January 2 on every even numbered year thereafter; that further Plaintiff be, and she is hereby awarded Christmas Holiday visitation with the minor child of the parties from December 26 to January 2 on every odd numbered year beginning with the Christmas Holidays for the year 1993 and such December 26 to January 2 Christmas Holiday visitation of Plaintiff with the minor child should continue on every odd numbered year thereafter; further the Court orders that

3. That during such visitation periods the Defendant, Abhimanyu Swain should deliver the minor child, Melissa Swain to Plaintiff, Delores Jan Swain Stevens at the beginning of such summer and Christmas Holiday visitation period and Plaintiff, Delores Jan Swain Stevens should be responsible for the return of the minor child to the home of Defendant, Abhimanyu swain in Damascus,

Maryland, at the end of each of such periods of visitation; further:

4. That the cross-Motion For Contempt and Cross-Motion to Modify Former Decree as filed by Defendant be and the same should be dismissed.

ORDERED , ADJUDGED AND DECREED 16 th day of April 1992.

GERALD E. BRADDOCK

CHANCELLOR

APPROVED AS TO FORM:

TRAVIS T. VANCE, JR.

ATTORNEY FOR ABHIMANYU SWAIN

W. B. DUGGINS, JR.

ATTORNEY FOR DELORES JAN SWAIN STEVENS

IN THE CHANCERY COURT OF WARREN COUNTY, MISSISSIPPI

DELORES JAN SWAIN STEVENS

Plaintiff

VS

ABHIMANYU SWAIN

Defendant

NO. 32, 415

ORDER

THIS CAUSE having come on before this Court on the 31st day of July, 1992, on Motion for contempt and to modify former decree in this cause filed by Delores Jan Swain Stevens, and the Respondent, Abhimanyu Swain, having been served with process in the time and manner required by law, and being present in Court with his counsel, and the Court having heard testimony in support of and in opposition to the motion as filed, and the Court being satisfied as to the jurisdiction of the parties and the

subject matter hereof, and being otherwise fully advised in the premises is of the opinion that the following relief should be granted:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That Court finds that Abhimanyu Swain is in contumacious contempt of the decree of this Court dated April 16, 1992, and he is hereby ordered into the custody of the Sheriff of Warren County, Mississippi, to be incarcerated in the Warren County jail until such time as he complies with the prior order of this Court dated April 16, 1992, and delivers the minor child, Melissa Swain, to Movant, Delores Jan Stevens. It is further ordered that **as the minor child is present in the Court** at this time, that she be delivered into the custody of her mother.

2. The Court further finds that the actions, conducts and behavior of Abhimanyu Swain toward the minor child, and the treatment of her by the Respondent, have affected the minor child and same constitute danger to her present and future mental and

emotional well being. The Court further finds from the totality of the circumstances, that there has been a material change of circumstances since the rendition of this Court's decree of April 16, 1992, which adversely affected the minor child, and the prior order regarding custody should be modified, therefore, it is ordered and adjudged that Delores Jan Swain Stevens be , and she is hereby awarded the permanent care, custody and control of the minor child, Melissa Swain.

3. **That Abhimanyu Swain be, and he is hereby awarded specific visitation rights with the minor child from June 20 to July 20 of each year, beginning with the year 1993, and from December 26, 1992 to January 2, 1993, and from December 26 to January 2 of each and every year thereafter. That Abhimanyu Swain be, and he is hereby ordered and directed to be responsible for and pay for all travel arrangements for said visitation to include picking up the child in Vicksburg,**

Warren County, Mississippi, and then return the child to the residence of her mother after said visitation period.

4. **That Abhimanyu Swain be, and he is hereby ordered and directed to post an appropriate surety bond with the Chancery Cler\k of the Warren County, Mississippi, in the Sum of $5,000.00 prior to exercising visitation rights with the minor child,** said bond to guarantee the timely return of the minor child to the custody of her mother, Delores Jan Swain Stevens, after visitation periods, said bond to be approved by the clerk of this Court.

5. The Court further finds that as there is no proof before the Court regarding the earning capacity of Abhimanyu Swain, the Court cannot at this time make an award of child support, however, as the evidence shows that Abhimanyu Swain is employed by the U. S. Government, and medical insurance is afforded to him through his employer at a reasonable cost, that he be, and he is hereby ordered and directed to keep

and maintain all medical insurance coverage that is presently in effect for the minor child, and he is further ordered to pay any hospital and medical bills incurred for and on behalf of the minor child. Further, that Respondent is ordered and directed to deliver to Delores Jan Swain Stevens, proper insurance cards so that she will have the necessary information to file insurance claims on behalf of the minor child.

6. **It is further ordered and directed that Abhimanyu Swain pay Delores Jan Swain Stevens the sum of $1,000.00 as attorney's fees in this action plus all costs of court,** said attorney's fees to be paid on or before 5 days from the date of this order.

SO ORDERED, ADJUDGED AND DECREED this, the 20 th day of August, 1992.

GERALD E. BRADDOCK

CHANCELLOR

APPROVED AS TO FORM ONLY:

J. MACK VARNER, ATTORNEY FOR MOVANT

TRAVIS T. VANCE, ATTORNEY FOR RESPONDENT

Ms Linda Stone

Supreme Court Clerk

P.O.Box 249

Jackson, MS 39205-0249

December 14, 1994

RE: Supreme Court Case No. 92 - CA - 0972

Dear Ms. Stone:

I am making this motion and requesting you to provide me with a "SUMMARY JUDGMENT" to the Supreme Court Case No. 92 - CA - 0972 before 15 January 1995.

This request is made in accordance with the Supreme Court of Mississippi's final mandate judgment decree, dated 8 December 1994, denying my request for a rehearing to the above referenced case. I appreciate your time and effort to expedite my request. Thank you and God bless you.

Sincerely,

Abhimanyu Swain Ph.D, P.E.
10522 Tralee Terrace
Damascus, MD 20872

CERTIFIED LETTER WITH RETURN RECEIPT

GREENRIDGE BAPTIST CHURCH

Office: (301) 972 0271 Prayer: 972 4523

Child Development Center 972 5151

TO: ADJUDICATING OFFICIALS; CONCERNED OTHERS

RE: MANYU SWAIN

MELISSA HOPE SWAIN, DAUGHTER

AMANDA SWAIN, DAUGHTER

NOW RESIDING AT: 10522 TRALEE TERRACE, DAMASCUS, MARYLAND

This is to attest to the claim of Manyu Swain that his daughters are actively and happily involved in Greenridge Baptist Church. They are very regular in attendance every Sunday, and they both participate in choir and other programs for their age group respectively.

Having been in the home, having talked with them at church in informal settings, I find them very well adjusted with no signs of abnormal behavior. Several families have reached out in distinctive ways

to Manyu, Melissa and Amanda in particular. They are in full fellowship with the church since Amanda formally placed her membership here.

While I am not privilege to all details of the custody dynamics that occurred previous to the move to Maryland, it would be very difficult to conceive that authorities would disrupt the normalcy of the present stable and healthy adjusted function of this family.

The observable bonding of Melissa to her father is significant enough to produce very traumatic reactions if forced separation is inflicted upon the family now. The pervasive security and stability in the known present environment is a constant that would have to be weighed against a possible creation of an alien, strange and strained milieu of unknown nurture and succor. The potential for social chaos for Melissa is very real if this present bonding to Manyu is destroyed or retarded seriously. There are no sign that would support any claims of abuse or neglect observable by me.

I would be happy to be contacted personally by any

concerned parties in this matter.

Daytime Phone No. (202) 514 9740
Home Phone: (703) 455 4775

Please do not hesitate to inquire of me.

Sincerely,

Charles R. Riggs, B. A. , B. D., M. Div., Th.D.
Mailing Address P. O. Box 419
Clarksburg MD 20871-0419

GREENRIDGE BAPTIST CHURCH

Office: (301) 972 0271 Prayer: 972 4523

Child Development Center 972 5151

August 27, 1992

The Honorable Gerald E. Braddock

Chancery Court Judge

New Court House

Vicksburg, Mississippi 39180

Dear Judge Braddock:

We, the undersigned members of Greenridge Baptist Church, Germantown, Maryland, respectively request the court to take into consideration this letter written on behalf of Dr. Manyu Swain regarding custody for his daughter Melissa.

Manyu and his daughters Amanda and Melissa have been a part of our church family for almost one year. Based upon our observations and

interactions with the Swain family, we can confidently attest to to his competence and achievement as a father to his daughters. We have observed him showing loving devotion to his children to providing for their care, maintaining a comfortable home, encouraging their participation in church related activities, and ensuring their success in school. Both of Manyu's children demonstrate maturity beyond their years and seem well adjusted in their interactions with their father, with each other, and with others of any age. We feel this is a tribute to the exceptional effort that Manyu has brought to his position as a parent.

We share with Manyu the very deep concern over the recent disruption in Melissa's life when her custody was awarded to her mother. For the past five years or so, the court has, on numerous occasions, seen fit to place Melissa in the primary custody of Manyu. In April, the decision of the court to allow Manyu to retain permanent custody of Melissa seemed to finally settle the matter. The error Manyu

made in delaying Melissa's court ordered visitation cannot be excused. However, his motivation for the delay was due to his concern for Melissa's completion of the school year and was not meant, in any way, to be in contempt of the court's order. We can understand that Manyu's action was offensive to the court. However, we feel to see this error changes the prior basis of which Manyu had been awarded custody.

Our primary concern is for Melissa's well being. We feel that her removal from a home she happily shared with a loving father and sister could be very traumatic to her. In addition, leaving her friends, her school, and her church places a great burden upon her. We are also concerned with the emotional trauma this separation places upon Amanda who, as an older sister, has been a source of love and support for Melissa. We ask the court to prayerfully reconsider the decision to place Melissa in her mother's custody and to return her to the father

and sister who have loved and provided for her these past years.

Respectively written,

Jess Edwards, Ph. D.

Deacon to Manyu, Amanda, and to Melissa Swain

As the author of this letter, I make myself available to be contacted by any concerned parties. I am also willing to appear before the court if needed or if necessary.

Daytime Phone No. (301) 975 3140

Home Phone No. for evenings: (301) 963 7387 , changed to (301) 371 9684

Mailing Address:

P. O. Box 419

Clarksburg, MD 20871-0419

UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL OCEAN SERVICE

Office of Ocean Resources, Conservation, and Assessment

Strategic Environmental Assessment Division

Rockville, Maryland 20892

July 30, 1992

The Hon. Gerald E. Braddock

Chancery Court Judge

Dear Judge Braddock:

I am Mr. Swain's supervisor at the Pollution Sources Characterization Branch of the National Oceanic and Atmospheric Administration, and am aware of his situation regarding his child custody case. I would like to offer these observations as a character reference for Mr. Swain. **I have known Mr. Swain since November 1991 when he came to work for my Branch. During this time, I have observed him to be completely devoted to**

caring for his two children. He has tried to get his children involved in the local community by encouraging them to join church and school activities, and has put unusual demand on his own work schedule so that he can spend more time with children. He appears to be doing everything in his power to be a good parent and provide a good home environment for his children.

However, the continuing battle over child custody is taking a toll on Mr. Swain. I feel that he is suffering emotionally and financially, and that the strain may eventually have an impact on him and the children's welfare. As his supervisor, I am also concerned over how the custody battle affects his job performance. For example, his current trip to bring Melissa to Mississippi came with no prior notice, and is very disruptive to the Branch work schedule.

Finally, I am concerned about the welfare of his children Melissa and Amanda. They are the one's who suffer as a result of Mr. swain's being pulled

about this process, and ultimately are the big losers because of the disruption to their lives and impact on their father 's energy and resources as a result of this draining fight. I would ask, as the judge for this case, you bring to a quick and unambiguous resolution so that all parties can move forward with a clear set of guidelines for their future conduct. Please contact me at work (301) 443 0454 (**Note this number is now changed to 301 713 3000 ext 156)** or home at 301 622 2010 if I can answer any questions regarding this matter.

Sincerely,

Daniel Farrow, Chief

Pollution Sources Characterization Bran

Oren D. Bailess

Chancery Court Clerk

Vicksburg, MS 39180 July 22, 1992

Ref. Docket No. 32, 415

Book 149,807

Delores Jan Swain Stevens vs. Abhimanyu Swain

Dear Mr. Bailess:

n accordance with the Statue of Maryland's Uniform Child Custody and Residence requirement, I am requesting you to send my entire file of the above reference to the Montgomery County, Chancery Court in Maryland. This request is made to you because myself and my daughters are the residence of Montgomery County as of October 29, 1991.

I further request that any petition filed against me in the Chancery Court by Mrs. Delores Jan Stevens be denied as your office has no jurisdiction over either on me or on my daughter Melissa Hope swain who lives with me.

Your response to my letter is appreciated and I look forward to hearing from you.

Sincerely,

Abhimanyu Swain Ph.D, P.E.

10522 Tralee Terrace

Damascus, MD 20872

Copy to: Mr. Travis T. Vance Attorney at Law

FILED JULY 24, 1992 12.15 p.m

OREN D BAILES, CHANCERY CLERC

WARREN COUNTY, MISSISSIPPI

MSC EXHIBIT 6

July 22, 1992

Dear Mom ,

I do not think it's right to take my Dad to court. This is my life that's your life. We both have a life to live now live it. **I don't want to come because I want to take care of the puppy.**

Love, This is my home.

Melissa

MSC EXHIBIT 3

WITNESS: JAN STEVENS

DATED JULY 31, 1992

Ms Linda Stone

Supreme Court Clerk

P.O.Box 249

Jackson, MS 39205-0249

November 30 , 1993

RE: Supreme Court Case No. 92 - CA - 0972

Dear Ms. Stone:

I am requesting you and the panel of judges to expedite my appeal of the above reference case and have your decision prior to Christmas if possible because I have not been allowed to visit with my daughter since July 31 , 1992.

Thank you very much for your effort to help me. I wish you and the panel of judges a very happy Christmas.

God bless you.

Yours very truly,

Abhimanyu Swain Ph.D, P.E.

10522 Tralee Terrace

Damascus, MD 20872

Ms Linda Stone

Supreme Court Clerk

P.O.Box 249

Jackson, MS 39205-0249

December 14, 1994

RE: Supreme Court Case No. 92 - CA - 0972

Dear Ms. Stone:

I am making this motion and requesting you to **provide me with a "SUMMARY JUDGMENT" to the Supreme Court Case No. 92 - CA - 0972 before 15 January 1995.**

This request is made in accordance with the Supreme Court of Mississippi's final mandate judgment decree, dated 8 December 1994, denying my request for a rehearing to the above referenced case. I appreciate your time and effort to expedite my request. Thank you and God bless you.

Sincerely,

Abhimanyu Swain Ph.D, P.E.
10522 Tralee Terrace
Damascus, MD 20872

CERTIFIED LETTER WITH RETURN RECEIPT